Exhibit 5

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF RHODE ISLAND

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SHEET METAL WORKERS LOCAL NO. :
20 WELFARE and BENEFIT FUND, :
and INDIANA CARPENTERS WELFARE:
FUND, On Behalf of Themselves :
and All Others Similarly :
Situated, :
Plaintiffs, :
vs. : Case No.
CVS PHARMACY, INC., et al., : 1:16-cv-00046-S
Defendants. :

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PLUMBERS WELFARE FUND LOCAL :
130, U.A., on Behalf of All :
Others Similarly Situated, :
Plaintiffs, :
vs. : Case No.
CVS PHARMACY, INC., et al., : 1:16-cv-00447-S
Defendants. :

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VIDEOTAPED

DEPOSITION OF: RENA CONTI

DATE: Friday, May 24, 2019

TIME: 9:05 a.m.
LOCATION: Williams & Connolly
725 12th Street, N.W.
Washington, D.C.
REPORTED BY: Denise M. Brunet, RPR
Reporter/Notary

Veritext Legal Solutions
1250 Eye Street, N.W., Suite 350
Washington, D.C. 20005

A P P E A R A N C E S

On behalf of the Plaintiffs:
ELIZABETH A. FEGAN, ESQUIRE
ZORAN (ZOKI) TASIC, ESQUIRE
Hagens Berman Sobol Shapiro, LLP
455 N. Cityfront Plaza Drive
Suite 2410
Chicago, Illinois 60611
(708) 628-4949
beth@hbsslaw.com

On behalf of the Defendants:
JARIEL A. RENDELL, ESQUIRE
WILLIAM T. BURKE, ESQUIRE
Williams & Connolly, LLP
725 12th Street, Northwest
Washington, D.C. 20005
(202) 434-5299
jrendell@wc.com

ALSO PRESENT: Gene Aronov, Videographer
William Schmidt
Janae Staicer

C O N T E N T S

EXAMINATION BY: PAGE:
Counsel for Defendants 8
Counsel for Plaintiffs 301
Counsel for Defendants 302

CONTI DEPOSITION EXHIBITS: PAGE:
Exhibit 1 Conti expert report 19
Exhibit 2 Proposed first amended complaint 52
Exhibit 3 CVS Health Savings Pass medication 78
Exhibit 4 Prescription benefit services agreement between CaremarkPCS and Sheet Metal Workers Local 20 Welfare and Benefit Fund 81
Exhibit5 Letter from Tibus to Sheet Metal Workers Local 20 dated 4/18/13 90
Exhibit 6 Blow-up of figure 2 in expert report 191
Exhibit 7 Document Bates stamped CVSSM-0025171 through 176 193
Exhibit 8 Extract of transactions DCVS-00197344780 and DCVS-00411688666 203
Exhibit 9 Extract of transaction DCVS-00333786270 239

(Exhibits continued on the next page.)

CONTI DEPOSITION EXHIBITS: PAGE:
Exhibit 10 Extract of transaction DCVS-00834699995 247
Exhibit 11 Extract of several transactions 253
Exhibit 12 Total damages per state 265
Exhibit 13 Average CVS store count per month per state 268
Exhibit 14 Blow-up and re-plot of figure 1 in attachment E to expert report 298

(*Exhibits attached to the transcript.)

payment mechanisms are possible here, or none at all.
Q And just to clarify the difference, is it fair to say that a deductible is generally an amount that a patient must pay out of pocket before their prescription benefit plan will cover any of the cost of the prescription?
A That's correct. That's my understanding of what a deductible is.
Q And a copay is a mixed or flat amount that a patient pays on a per prescription basis --
MS. FEGAN: Objection to form.
BY MR. RENDELL:
Q -- is that fair?
A I mean, copayments can be flat or they can be percentage-based.
Q Do you have -- strike that.
So are you saying there's -- strike that.
Are you using the term "copay" interchangeably with coinsurance?
A Yes, I already -- I already stated that, that I was using this term generically.
Q So in the industry isn't it fair to say that a coinsurance is a variable amount, usually based on a percentage that a patient must pay?

MS. FEGAN: Objection to form.
THE WITNESS: That's my understanding, yes.
BY MR. RENDELL:
Q Wheres a copay is a fixed or flat amount that a patient pays?
A That's correct.
Q Depending on different plan deductibles, co-pays or coinsurance across different plans, different patients may pay out of pocket very different amounts for the same drug. Is that fair?
A Yes.
Q A patient who goes to fill a prescription for the same drug may be subject to a deductible, right?
A Yes.
Q And another patient who walks in right after that patient to fill the same drug [sic] may not be subject to a deductible, right?
A That's correct.
Q Patients who are subject to a deductible would have to pay the entire cost of the prescription until they meet the deductible, right?

MS. FEGAN: Could you read that back? I think it was the wrong negative.
BY MR. RENDELL:
Q Patients who are subject to a deductible have to pay the entire cost of the prescription until they meet the deductible, right?
A That's my understanding.
Q So patients who are subject to copayments -- and I'm using that in the industry sense of a fixed or flat amount -- do you understand that a copayment could vary by category or tier of drug?
A So, again, out-of-pocket costs associated with preparation drugs in the general sense may be subject to different payment amounts related to formulary tiers.
Q As an example, one plan could have a flat $4 copay for any 30-day generic prescription while another plan has a tiered structure where some drugs have a $4 copay; other drugs have a $10 copay, et cetera, right?
A Sure.
Q A plan with a coinsurance could have, for example, a 20 percent coinsurance across the board for every type of drug. That's a possibility,

right?
A That's possible. Or it may be tiered as well.
Q And many patients may even have a mix of copay and coinsurance, depending on the category of drug, right?
A Yes, that's why I use the more general term.
Q Returning to your report, if you could please turn to page 10. And looking at paragraph 25 at the top of the page, do you see where you wrote, "The remainder of the cost is paid by the insured's health plan, which is operated by an entity known as a third-party payor (TPP)"?
A Yes.
Q The plaintiffs in this case are TPPs, right?
A Yes.
Q As TPPs, plaintiffs operate health plans, correct?
A Yes.
Q And then looking at paragraph 26, do you see that you wrote, "PBMs are companies that serve as middlemen between pharmacies and TPPs. Their

and are able to potentially pass those marked-up prices to insurers and patients.
Q Now, regarding PBMs, is it fair to say that your point is that PBMs may charge their TPP clients more for a drug than the pharmacy charged the PBM for the drug?
A Yes.
Q It's also possible that a PBM would have a transparent or pass-through contract relationship with their TPP such that the PBM passes on exactly the price that was paid to the pharmacy, right?
A Yes. Exactly. Those types of pass-through contracts are possible here, just like they --
THE REPORTER: I'm sorry. You need to --
THE WITNESS: I'm sorry.
Yes, it is possible for there to be -- there to exist pass-through contracts, just like there are in other parts of the health care system.
BY MR. RENDELL:
Q Now, as we discussed earlier, PBMs provide services or some sort of value to TPPs. Isn't that fair?

A Right. So TPPs contract with PBMs for a variety of reasons.
Q PBMs incur costs for providing those services, right?
A Yes.
Q So you wouldn't expect PBMs to provide those service for free, would you, as an economist?
A No, of course, but the pricing of drugs -- or the transaction cost associated with the ingredient cost isn't the only types of fees that the PBM is charging the TPP.
Q Would you agree that a TPP can agree to a transparent or pass-through pricing arrangement with the PBM if that's what they seek?
A Yes. They can also agree to pay fees on top of the specific transaction price for a given product in order to pay the PBM for rendering other types of services.
Q Right. So with a pass-through pricing arrangement, the PBM doesn't add a mark-up on the price of the drug, right?
A That's my understanding --
Q But --
A -- of what it means to have transparent

pricing contracting.
Q But the PBM would charge for its services by adding on a fee for each prescription, right?
A Well, the fee could be -- have different structures. It doesn't need to be for each specific prescription.
Q But it wouldn't come in the form of -- strike that.
What you can say for sure is that it wouldn't come in the form of a mark-up on the drug for a transparent pricing arrangement, right?
A That's correct.
Q With spread pricing, the PBM charges for its services through a mark-up between what the PBM paid the pharmacy for a drug and what the TPP pays the PBM for the same drug. Is that fair?
A Yes, that's right. And then, on top of that, the TPP may also pay the PBM other fees for rendering services.
Q You would expect the other fees to be lower in a spread pricing arrangement than in a transparent pricing arrangement, right?
A I don't know. It really depends.
Q Moving on to paragraph 51, do you see where you wrote that, "There may be differences

between what the PBM charges a patient and a patient's TPP and what the PBM pays the pharmacy for dispensing a drug. This difference may vary depending on the drug or the drug's price. The differences tend to be more complicated than a simple flat fee per drug dispensed"?
A Yes.
Q Do you see that? So this refers to what we've been discussing, a spread pricing arrangement, right?
A Yes.
Q With spread pricing, isn't it possible that a PBM charges the TPP on a particular transaction less than what the PBM actually paid to the pharmacy for that specific transaction?
A I'm sorry, can you restate the question?
Q It's possible in a spread pricing arrangement that, for a particular transaction, the PBM actually charges the TPP less than what the PBM paid to the pharmacy?
A I don't see exactly how that would work.
Q So you don't believe that in a spread pricing arrangement, there could be no mark-up or even a negative mark-up for certain individual drug transactions over the course of, say, a full

year?
A We're talking about a specific prescription. That was the hypothetical that you provided to me.
Q Right. I'm asking, for a specific prescription, isn't it possible that there could be no mark-up, or even a negative spread, on a particular transaction under a spread pricing arrangement?
A It's possible, but it's not typical.
Q Isn't it possible for certain businesses to take a loss on certain products in order to acquire business where they gain profit on other products?
A Yes, that's possible.
Q Is it possible that PBMs have certain drugs that are loss leaders in order to acquire a TPP contract where, in fact, the PBM pays more to the pharmacy for the drug than what the PBM charges a TPP?
A I actually typically think of pharmacies as being ones that might use certain drug as being loss leaders. I am not aware of PBMs using -- transacting on specific products as loss leaders.
Q Is it possible?

A It might be.
Q From an economic perspective, would it be rational for a PBM to consider costs and profit in the aggregate rather than focusing only on individual transactions?
MS. FEGAN: Objection to form.
THE WITNESS: For what objective?
BY MR. RENDELL:
Q For a given TPP-to-PBM contractual relationship.
A Can you restate the question, please?
Q So considering one TPP-to-PBM contractual relationship, could it be economically rational for the PBM to focus on maximizing the aggregate profit in that relationship rather than focusing on profits for specific individual transactions?
A Yes, that's possible. In a given time period.
Q Right. And you understand, as you alluded to earlier, that PBM-to-TPP contracts may often contain aggregate annual guarantees related to generic drug pricing, right?
A Yes.
Q Generally, the way these generic effective rate guarantees work is that the PBM

will guarantee the TPP an average discount off of AWP --
THE REPORTER: I'm sorry. The way these generic effective rate guarantees will work, the PBM --
MR. RENDELL: The TPP --
THE REPORTER: -- will guarantee the TPP...
BY MR. RENDELL:
Q -- an average discount off of AWP in aggregate for all the generic drugs dispensed during a particular time period. Is that fair?
A So as I understand it, these rate guarantees may be inclusive of certain drugs and certain time periods and are essentially a type of price guarantee over those drugs and those time periods.
Q Is it possible that some guarantees include usual and customary transactions while other guarantees for other clients do not?
A Do you mean -- can you restate the question?
Q Sure. Is it possible that one PBM-to-TPP relationship may have a guarantee where usual and customary transactions factor into the guarantee

while another PBM-to-TPP relationship may have an aggregate guarantee that ignores usual and customary transactions?
A It's possible.
Q Now, if a PBM does not meet the rate guarantee, the PBM will owe money to the TPP. Is that your understanding?
A Yes. In aggregate, over time.
Q Right. But it doesn't work the other way in the sense that if the PBM does better than the guarantee, the TPP doesn't owe money back to the TPP [sic], right?
MS. FEGAN: Objection to form.
THE WITNESS: I'm sorry, what do you mean by "does better than"?
BY MR. RENDELL:
Q If the PBM outperforms the guarantee, in other words, gives, in the aggregate, cheaper drug prices than what it guaranteed, the TPP doesn't owe money back to the PBM, right?
A That's right.
Q So from an economic perspective, isn't it rational for the PBM to try to meet the GR guarantee on an aggregate basis as closely as possible without exceeding it?

different health plan's agreement with a PBM?
MS. FEGAN: Objection to form.
THE WITNESS: That's not what I stated.
BY MR. RENDELL:
Q I understand. I'm asking, when you refer to the lowest possible price, are you referring only to prices available through point-of-sale discounts, membership card programs, or are you also including discounts negotiated by PBMs for specific clients?
A Yeah. Thank you. The former.
Q And going back to the issue of impact, are you aware how many class members may have had transactions adjudicated subject to U&C -- let me start over. Sorry.
Are you aware of how many class members may have been impacted without suffering an injury from the scheme?
A No.
Q Could it be 10 percent?
A I have not done that calculation.
Q Thank you. We can move on to page 22.
A I have a follow-up, I'm sorry, to that, which is that I cannot identify plan members in the data that has been produced by CVS and

Caremark. But if that data was provided to me, I would be able to do that calculation.
Q When you say that you cannot identify class members from the data produced by CVS, you mean pharmacy claims data. Is that fair?
A That's right. So the claims data that was produced by CVS and Caremark does not include the name of the health plan.
Q You also referred to data produced by Caremark. Are you saying that PBM data would not allow you to identify health plans either?
MS. FEGAN: Objection to form. Mischaracterizes --
THE WITNESS: That's not what I said.
BY MR. RENDELL:
Q So when you say data produced by Caremark did not allow you to identify the health plans, what did you mean by that statement?
A I'm saying the data that has been produced by CVS in this specific matter does not allow me to identify all class members that might have been impacted by the scheme.
Q So that statement doesn't necessarily apply to Caremark; is that right?
A That's correct. And it's entirely -- but

again, it's all -- all the data that was produced. There is data that was produced for me that was -- that allows me to identify specific transactions for the three named plaintiffs, but I would need similar information in order to calculate -- in order to identify class members -- sorry, in order to identify and also enumerate the number of class members impacted by the scheme.
Q Are you aware that that data was provided for certain states by Caremark?
A I am not. Do you mean -- I'm sorry. Just to make sure that I understand that question, Do you mean that it was provided across the board nationwide?
Q I'm asking whether you're aware whether Caremark produced all of its PBM data for specific states.
MS. FEGAN: Objection to form.
THE WITNESS: I'm not sure I totally -- I don't completely follow your response, but we can move on.
BY MR. RENDELL:
Q Well, are you aware whether Caremark produced PBM data for the State of Indiana?
A I am not.

Q Are you aware of whether MedImpact produced PBM data for the State of Indiana?
A I am not.
Q Could you please turn to page 22? And I'll direct your attention to paragraph 65. Do you see where you wrote, "Based on instructions from counsel, HSP prices should have been included in the calculation of U&C prices for each at-issue drug"?
A Yes.
Q And then you continue, "In turn, this calculation should have impacted the prices the TPPs paid the PBMs for at-issue drugs."
A Yes.
Q Is that right? When you say HSP prices should have been included in the calculation of U&C prices, do you mean that HSP prices should have been reported as the U&C price?
A Yes.
Q And in developing your damages model, is it fair to say that you assumed for every transaction that you looked at that the HSP price should have been reported as the U&C price for each at-issue drug?
A Yes.

Q And then you also assumed that had the HSP price been reported as the U&C price, that would have affected the price paid by every TPP in your data set. Is that fair?
A For the at-issue drugs.
Q Right. Thank you for clarifying.
A In a given time period.
Q So -- right. So just to clarify, during the class period, for each at-issue drug, you assumed that if the HSP price had been reported as the U&C price, every class member would have been entitled to receive that HSP price as the U&C price?
A This is not a statement about entitlement. This is a statement about how to think about the correct calculated price per prescription.
Q Well, in calculating the price, did you consider on a transaction-by-transaction basis whether the TPP associated with that transaction was or was not entitled to U&C price?
A So I assumed that they were entitled to U&C prices. That's part of the class definition.
Q Is that an assumption you made based on instructions from counsel or was it based on

anything else?
A Based on instructions from counsel.
Q Are you offering an opinion that if HSP prices had been reported as U&C prices, every single class member would have been entitled to those HSP prices as U&C prices?
A No. It's just an assumption in my model.
Q Moving on to paragraph 66, do you see where you wrote -- and this is the second sentence -- "Actual TPP prices are given by the CVS claims data and can be assumed to be the formulaic contracted price"?
A Yes.
Q Do you mean that you assumed the price was correctly calculated by the PBM based on the formula that was being used at the time for the specific transaction?
MS. FEGAN: Objection to form.
BY MR. RENDELL:
Q Actually, let me ask this way: What do you mean by assuming to be the formulaic contracted price?
A Yes. So prices at a transaction level are calculated based on an algorithm. And -- so all I'm assuming here is that the algorithm,

again, calculated a price, and that was the price that ultimately got passed through to the TPP.
Q Thank you. So in other words, is it fair to say you're not offering -- strike that.
Is it fair to say you're not offering an opinion about what any of the formulaic contracted prices were, according to given contracts between PBMs and TPPs?
A So, no. Instead, what I'm arguing is that, by revealed evidence, we can just assume that the prices paid reflect the arrangement that the TPP and the PBM made. And again, I don't need contracts in order to ascertain that because it's -- it's adjudicated in an algorithm by the computers of the pharmacies and the PBMs.
Q So if the original -- so if you looked at a transaction and the original U&C price as reported were already lower than what the TPP paid, would it be fair to assume that that TPP's formulaic contracted price did not include usual and customary price?
A No. Because all I can say is what the -- again, what the -- so again, I have pharmacy claims data. I don't have PBM data and I don't have TPP data. All I have is what the pharmacy

was paid. But the pharmacy is paid as a function of their relationship with the PBM and not necessarily that of the TPP.
Q So looking at the data that you analyzed, are you saying you don't know what the TPPs actually paid for the drugs in your calculation?
A No. The TPP price, the actual price, is reflected in the claims data.
Q Is that the price that the PBM paid to the pharmacy or the price that the TPP paid to the PBM for the drug?
A The former.
Q So looking at the CVS claims data, you don't know how much the TPP actually paid for any of the drugs in your analysis; is that right?
A I can just assume that it is a reflection of that.
Q When you say a reflection, do you mean that what the TPP paid might have been higher or it might have been lower or it might have been the same?
A It was likely higher. Thank you.
Q So you would assume that the TPP would likely pay more than what the PBM paid for a particular drug --

A That's right.
Q -- is that right?
A Because of the regime of spread pricing.
Q But you would acknowledge that some TPPs have pass-through pricing, right?
A They may have pass-through pricing for some drugs over some time periods. But again, if pass-through prices existed, they would be reflected in the actual transactions.
Q On both the pharmacy side and the PBM side?
A That's right.
Q Now, in developing your damages model, is it fair to say you assumed that the U&C price for the at-issue drugs should be equal to the HSP price regardless of quantity dispensed?
A No.
Q Did you prorate the HSP price based on whether it was a 90-day supply or a less than 90-day supply?
A No. I only included claims that were a 90-day supply or less in my overcharge calculation.
Q Understood. So looking only at claims of 90 days or less, did you assume that the U&C price

for those should have been the HSP price regardless of whether it was a 90-day supply or a 30-day supply or a 15-day supply?
A I think -- oh, I see what you mean. As I understand it, yes, I think we do calculate prices that reflect quantities supplied.
Q So just to clarify, if you looked at a particular drug and the HSP price was 11.99 for a 90-day supply, and then you looked at a different transaction where it was the same drug, but only a 30-day supply was dispensed, did you set the HSP price to 11.99 or did you prorate it to the lower 30-day supply?
A So what I did was I took this in a step-wise fashion. So I took 90-day supplies alone and used the -- and swapped the actual price for the HSP price. And then, for the prices that were -- for the quantities that were lower, I did a separate transaction where I swapped the actual price for the HSP price.
Q That's helpful. So in the separate -- looking only at less than 90 days, was the price that you swapped in for the HSP the full HSP price for the 90-day supply or did you make it 50 percent of the HSP price if it was a 45-day

supply?
A I did not do that type of proration for the 50 percent of claims where there was 90-day supply or less.
Q Okay. And you set the U&C -- strike that.
You assumed the new U&C price would be equal to the HSP price regardless of what had been in the U&C field as reported at the time; is that right?
A I'm not totally following. I'm sorry.
Q Did you look at the originally reported U&C price as part of your analysis?
A No.
Q So if the --
A And that's because the TPP wouldn't necessarily see the U&C price.
Q I guess I'm confused by that. Isn't it your understanding that U&C prices get reported all the way through the transaction?
A No. That is not my understanding.
Q So you're saying that the originally reported U&C price would only go to the PBM? Is --
A That's correct.

Q -- that what you're saying?
And did you vary your analysis at all based on what was in the originally reported U&C field?
A What do you mean by that?
Q Well, as part of your damages calculation, did you factor in what had been originally reported as U&C or not?
A No.
Q I'd like to move on. I think we can go forward to page 29. And I'll direct your attention to paragraph 76.
A I'm sorry, what page?
Q Page 29.
A Great. Thank you.
Q Paragraph 76. Do you see where you wrote, "Gaining access to the HSP price was, by definition, associated with payment of an annual membership fee. Therefore, the full price a cash payor faces for the first prescription they fill under the HSP is the annual membership plus the price for the particular drug"?
A Yes.
Q Because gaining access to the HSP price required payment of an annual membership fee, you

any of their predecessors as PBMs, right?
A Yes.
Q So a TPP that had a different PBM throughout the class period, other than these specific PBMs, would be excluded from the class, right?
A That's my understanding.
Q Because of that limitation, you excluded transactions with other PBMs from your damages calculation, right?
A Yes.
Q You only kept transactions where the PBM was Caremark, Express Scripts, Medco, OptumRx or MedImpact, right?
A Through the Condor code, yes.
THE REPORTER: I'm sorry?
THE WITNESS: Yes.
BY MR. RENDELL:
Q And that was the Condor plan codes?
A Yeah. So -- scratch that, actually. Just through the data that I have.
Q Do you know whether Caremark, Express Scripts, Medco, OptumRx or MedImpact may adjudicate transactions where there is no health plan involved on the other side?

A I am not.
Q Is it possible that there may be manufacturer programs where the PBM is adjudicating the transaction on behalf of the manufacturer and there is no health plan actually paying a share of the prescription drug?
A Manufacturer of what, sir?
Q Of pharmaceutical products.
A I'm not aware of that, sir.
Q Are you aware of whether there may be medical savings account programs where the transaction is adjudicated through the PBM, but the entire payment comes from either the patient at the point of sale or the medical savings account on the other end?
A So medical savings accounts tend to be paid for by consumers. They're a type of savings account.
Q Are you aware of whether medical savings accounts may be adjudicated through a PBM or not?
A It's possible.
Q And then you --
A Wait. Hold on. I'm sorry. But usually people who have medical savings accounts are also insured.

Q Now, you understand that the putative class member health plans must have paid for generic prescription drugs purchased from CVS that were included in the Health Savings Pass program, right?
A Yes.
Q So that's why you excluded from your calculation any transactions involving non-HSP drugs, right?
A That's right.
Q Then you also understand that the putative class member health plans must have paid for those drugs based on a formula containing usual and customary price, right?
A Yes.
Q Were you able to apply this limitation regarding payment on a formula containing usual and customary price in your damages calculation presented in your report?
A No. But I reserve the right to do so at a later date when I have the data.
Q So to be clear, you did not review contracts from across the putative class to see if their contractual pricing formula contained usual and customary price?

A I don't need contracts to do so, sir.
Q Why is that?
A Because there's a lot of other evidence that could be used to provide that information.
Q Such as what?
A Computer algorithms that are used by the PBM.
Q So you believe -- well, strike that.
Did you review computer algorithms to determine whether they included or excluded usual and customary price?
A Provide me the data and I'm more than happy to provide that information.
Q Are you aware whether the computer algorithms that you refer to would be individualized to the specific TPP involved?
MS. FEGAN: Objection to form.
THE WITNESS: They might be.
BY MR. RENDELL:
Q Would you agree that one way you could determine whether the TPP-to-PBM agreement provides for a formula containing usual and customary price would be to look at the health plan's contract with its PBM?
A It's one way, but there are many others

as well, as I had mentioned.
Q Well, you mentioned computer algorithms. Are there other ways?
A There may be.
Q Sitting here today, are you aware of any other ways?
A There could be other types of documents that would be helpful.
Q Can you explain what type of documents you'd be looking for?
A There could be other documents produced in discovery that would be helpful for actually assessing that exclusion.
Q But there's nothing specifically that you're thinking of, sitting here right now. Is that fair?
A No. But again, computer algorithms would help here because we know that these adjudications are occurring at a -- literally a momentary basis. And so -- and most of them are likely being done electronically.
Q As far as you know, is it fair to say your damages calculation, as presented in your report, may include transactions that were not paid for based on a formula containing usual and

customary price?
A So the -- I present several overcharge estimates. And the overcharge estimates are related to the specific TPPs. Plaintiffs, I believe, are reflective of the existence of U&C contract "lower of" formulas.
Q Setting aside named plaintiffs, are you aware whether your damages calculation for the 14 states, or the statistical extrapolation, whether that may include transactions that were not paid for based on a formula containing usual and customary price?
A It's possible that they are inclusive of other -- of claims that do not have that specific formula applied at the point of sale or in the adjudication on the back end.
Q Are you aware of how many transactions in the data that you reviewed and for which you calculated overcharges were paid for based on a formula that did not include usual and customary price?
A For the national estimates, right? The 14 states plus the --
Q Right.
A -- national inflated estimates? No, I

don't have the data to be able to assess that.
Q Could it be 5 percent of all the transactions?
A I don't have the data to assess that and, therefore, I don't feel comfortable speculating. But again, the data is available. It's just a question of it being provided to me.
Q Now, when you say the data is available to determine whether the adjudication is based on a formula containing usual and customary price, what data are you referring to?
A Well, so I think of the data as being different forms of evidence which could include the computer algorithm that is adjudicating payment between the PBM and the TPP. That could also include contracts. It could include other documents as well.
Q So when you say data, you're not referring to the PBM data that might be provided, right?
A It's inclusive of that, but it's more general than that. My point is that it's knowable.
Q And let me ask it more specifically to be clear. Is it knowable just looking at PBM data?

A I don't know what that means, sir. Can you clarify?
Q If you had -- well, for the named plaintiffs --
A Right.
Q -- were you able to determine whether their pricing was based on a formula containing usual and customary price by looking only at their PBM claims data?
A It is inclusive of data that were provided in addition to other types of data, which include contracts and other documents.
Q To conclude that the named plaintiffs' transactions were adjudicated according to a formula containing usual and customary price, you had to look at their contracts, right?
A I looked at their contracts. I looked at other documents as well.
Q What other documents did you look at?
A They're -- all of the documents that are contained in my report.
Q If -- strike that.
Does the PBM claims data that you reviewed state whether a transaction is adjudicated according to "lower of" U&C logic or

not?
A No. It only contains the amount that the TPP is required to pay.
Q If a health plan paid for HSP drugs but that health plan did not have a formula containing usual and customary price, would you agree that the plan's payment would have been the same whether or not HSP was reported as the usual and customary price?
A I don't know. I haven't thought about it.
Q Returning to footnote 11 of your report, and continuing on to the exclusions, do you see where you wrote, "I understand that the following payors are excluded from the classes: 1, any governmental payors, including Medicare and Medicaid; 2, any health plans that served on Caremark's client advisory committee since January 1, 2008; and, 3, any health plans that have had parent, subsidiary or affiliate relationships with any pharmacy benefit manager at any time since January 1 of 2008"?
A Yes.
Q You relied in part on these exclusions in developing your damages model. Is that fair?

A The first one.
Q So you attempted to included governmental payors, including Medicare and Medicaid, right?
A Yes.
Q And specifically you did that by excluding transactions where the data field AG_TYP_DCS contained a missing value or the value FEDERALLY FUNDED OTHER, Medicaid, Medicare or WORKERS COMP. Is that right?
A Can you point me to where you're reading from, sir, because it's not --
Q Oh, sure. That's --
A It's not contained in --
Q Yeah.
A -- footnote 11.
Q That's a good point. Page 25, paragraph 71.
A Page 25, 71. Okay. No, footnote 71 doesn't -- page 25, footnote 71?
Q Paragraph 71.
A Okay. Sorry.
Q And just looking at the second to last sentence.
A Yes, that's right.
Q Do you believe that you succeeded in

excluding all governmental payors from your damages calculation?
A Within the limits of the data that I have available.
Q Would you agree that a state government is a governmental payor?
A Yes.
Q Would you agree that a county government is a governmental payor?
A Yes.
Q Would you agree that a city government is a governmental payor?
A Yes.
Q Would you agree that a public school is a governmental payor?
A I don't know. I haven't thought about that.
Q If your damages calculations include transactions paid for by state governments, county governments, city governments, would you agree that you have not succeeded in excluding all governmental payors from your damages calculation?
A Sure.
Q How -- if you had the PBM data, how would you go about determining whether a given -- any

given health plan was a governmental payor or not?
A I'm assuming the PBM has that information.
Q Are you assuming that the -- well, strike that, actually.
In the PBM claims data that you reviewed, did it specify the entity type for each transaction?
A The PBM data that I had was specific to the plaintiff TPPs.
Q Well, did it have a field showing you whether the payor was a governmental entity or not?
A It was just specific to the plaintiff TPPs.
Q Can you think of any specific data field you might find in the PBM claims data that would allow you to filter out every governmental payor?
A I haven't thought about it.
Q Are you aware that --
A Are you saying in addition to these that I've already filtered out?
Q Correct.
A Again, I expect those other payors to be -- or those other claims to be pretty small in

comparison to these, and I would have to think about it.
Q Are you aware whether state government payors who are paying on behalf of state employees -- are you aware whether those transactions would appear in claims data as employer transactions or as one of these types of transactions you've referenced here?
A I don't know.
Q And then returning to footnote 11 on page 5, I just want to ask -- strike that.
Just confirm that you did not attempt to exclude health plans that served on Caremark's client advisory committee since January 1, 2008 from your damages calculation, right?
A That's correct.
Q Are you aware of what those health plans might be?
A I do not know who they are.
Q Are you aware of how many health plans may fall into that exclusion?
A No.
Q And then the third exclusion of health plans with parents, subsidiary or affiliate relationships with any pharmacy benefit manager at

any time since January 1, 2008, you didn't filter those out either from your damages calculation, right?
A I don't have health plan data in the data that was provided to me. So I can't filter them out.
Q If you knew the names of the health plans in the data, how would you go about determining whether a particular health plan ever had a parent, subsidiary or affiliate relationship with any pharmacy benefit manager at any time since January 1, 2008?
A Again, I'm assuming there would be probably a variety of different evidence that would support inclusion or exclusion.
Q Would it be found in the PBM claims data itself?
A It might be. And it might also entail the use of other information.
Q So do you believe that PBM claims data includes a field that says whether a particular payor is or is not affiliated with any other PBM at any time since January of 2 -- sorry, November 2008 -- January of 2008?
A So again, I don't have the data. And so

what you're asking me to do is speculate. And so -- nor have I been asked to do this in this specific report.
My opinion is that in order to operationalize this specific exclusion, I need data from the PBMs that would identify the plans, and that would likely need to be paired with additional evidence.
Q So to be clear, you don't believe you could do it based solely on PBM claims data?
A I don't know.
Q Do you have an expert opinion of the definition of affiliate relationship in the class definition?
A So I don't have a legal opinion. Is that what you're asking?
Q No. Just if you have any expert opinion. As an economist or as a professor who knows a great deal about the health industry, do you have any expert opinion on how you would define affiliate relationship in this context?
A So again, this is -- this paragraph is paraphrasing the complaint. And my general understanding of how this would be operationalized is that the health plan is an owner or a -- or the

subsidiary itself of a given PBM.
Q Well, I guess that's why I'm specifically asking about affiliate relationship. So would a joint venture be an affiliate relationship?
A Potentially.
Q Would owning a significant but non-majority share of a PBM constitute an affiliate relationship?
A Potentially.
Q How would you go about determining that for any given health plan?
A Again, my impression -- or the way in which I would generally approach this is to look at evidence to support how to operationalize the term "affiliate." And I would also likely rely on counsel.
MR. RENDELL: Okay. I think it's a good time for a break.
THE VIDEOGRAPHER: We are going off the record. This is the end of media unit number 3. The time is 2:33 p.m.
(Whereupon, a short recess was taken.)
THE VIDEOGRAPHER: We are back on the record. This is the beginning of media unit number 4. The time is 2:50 p.m.

Q In your damages calculation for named plaintiffs, did you account for the effects of any generic effective rate guarantees that they have?
A No.
Q Would you agree that having a generic effective rate guarantee can affect the economic relationship between a PBM and a TPP?
A It might.
Q Are you aware of how much the named plaintiffs may have received in annual reconciliation reports related to their generic effective rate guarantees?
A I've seen some documents referencing it.
Q Have you ever calculated how factoring in those reconciliation payments would affect your numerical calculations in footnote 79 of your report?
A No, I have not calculated -- I have not done that calculation at this time. Again, I view it as an offset, and it requires some thinking because I would need to understand how those specific drugs did or did not factor into the generic reconciliation rate.
Q For the named plaintiffs, you had copies of contracts between them and their PBMs, right?

A Yes.
Q And you had access to all of their PBM claim data, right?
A As I understand it.
Q Based on that information, could you calculate the effect of their generic effective rate offset or would you require more information?
A It's possible. I'd have to think about it.
Q Are you aware whether the HSP drugs and usual and customary transactions would factor into the named plaintiffs' reconciliation payments or not?
A Can you state the question, please?
Q Are you aware whether HSP drug transactions, had they again adjudicated at U&C price, would factor into the named plaintiffs' reconciliation payments?
A So again, at this stage of my estimation, I haven't thought that hard about the generic reconciliation rate, because we're talking about a very small number of claims relative to the total that are being -- that are actually eligible for this overcharge calculation to begin with. And I need to kind of think through how one would

actually operationalize that if required at all.
Q So at this time, you don't have a model that would be able to do that. Is that fair?
A I don't have a method for doing that. It doesn't mean that I can't come up with a method, but I'd have to think through whether I have enough data to do so and I have the right type of data to do so, what types of assumptions I would have to make, et cetera.
Q Now, I'd like to ask some more general questions about your damages model for the 14 states. Did you exclude any transactions from your damages calculation other than the exclusions we've already discussed, including figure 2 and the exclusion based on HSP enrollment fees?
A Can you be more specific?
Q Well, maybe -- let me direct your attention to attachment D, footnote 6.
A Okay. Attachment D, footnote 6.
Q And footnote 6 indicates that your exclusion for the HSP offset reduced the 59-plus million claims down to 43,213,540 claims, right?
A Yeah, I'm with you.
Q After making exclusions down to this 43-plus million number, did you do any other

exclusions to further limit this 43,213,540 number?
A No.
Q You did not exclude transactions based on the fact that the associated health plan may have known that the HSP price was not being reported as U&C price?
MS. FEGAN: Objection. Lack of foundation.
You can answer.
THE WITNESS: Thank you. No, not at this time. My understanding is that may occur in the future or could potentially occur.
BY MR. RENDELL:
Q Did you exclude any transactions based on the fact that the associated health plan as an arbitration agreement in its PBM-to-TPP contract?
A No.
Q Did you exclude any transactions based on the fact that the associated health plan has a generic effective rate guarantee in its PBM-to-TPP agreement?
A No, not at this time. As we've discussed, those types of exclusions and additional offsets would require some thinking.

Q In calculating damages -- excuse me. Strike that.
In calculating offsets on a transaction-by-transaction basis, you kept the patient's portion of the payment fixed, right?
A Yes.
Q Are you aware that some patients may have plans that require variable cost sharing; in other words, a coinsurance, not a fixed copay?
A Yes.
Q Are you aware that your decision to treat the patient share of the transaction as fixed increases your calculated overcharge for every transaction where the patient has a variable coinsurance rather than a fixed copay?
A Does it?
Q Well, we can walk through an example, if you'd like. I'm afraid it's going to be too difficult to calculate, but would you agree that if the original price for a drug is $75 and the patient has a 10 percent coinsurance, the patient's original coinsurance will be $7.50?
A Sure.
Q And if you change that total price from $75 to 11.99, the 10 percent coinsurance falls

from $7.50 to $1.19, right?
A I mean, I'm not doing the math in my head, but I agree that it would fall in some amount.
Q It would fall; is that right?
A That's what you just represented, correct.
Q And have you considered whether that reduction in the patient's share of the transaction would increase or decrease your calculated overcharge amount?
A Not at this time.
Q I'd like to show you another transaction example. This will be marked Exhibit 9.
(Conti Deposition Exhibit Number 9 was marked for identification.)
BY MR. RENDELL:
Q Do you see this transaction bears the Bates number DCVS-00333786270?
A Yes, I see that.
Q And do you see the U&C price originally reported on this transaction was $60.59?
A I'm sorry, where do I see that?
Q The field charged U&C price amount.
A Yes.

Q The patient's share here was $10, right?
A Yes.
Q And the PBM's share was $35.78, right?
A Yes, I see that.
Q So the total payment for this transaction was $10 plus 35.78, or $45.78 --
A Okay.
Q -- Is that fair to say?
A Yes. And are you representing that this is a claim that was included in my calculation?
Q Yes. I'll represent that.
A Okay. In my overcharge calculation, correct?
Q In your overcharge calculation, yes.
A Okay.
Q And to be clear, the overcharge calculation at the end, that doesn't include your HSP offset.
A Okay. That's helpful.
Q It's just your transaction-by-transaction overcharge calculation.
Okay. So here you see that the $45.78 amount, which, by the way, is in the sell price amount column so, fortunately, we don't have to do the math. It's SELL_PRC_AMT.

A I'm sorry what is that amount referring to?
Q You see that the $45.78 is the sum of $10 plus the $35.78 PBM payment.
A Yes.
Q Okay. And looking at this, you can see that $45.78 is less than the reported U&C price amount for this particular transaction, right?
A I'm sorry, where do I see the reported U&C amount?
Q The CHRGD_UC_PRC_AMT.
A I'm not following you. So the -- you're saying -- you're representing that this is the actual U&C price?
Q This is the U&C price as it was reported --
A I'm with you.
Q -- at the time.
In conducting your damages analysis, did you actually look at the U&C price field?
A I looked at it, but it did not factor into my calculation.
Q Right. Understood. Okay.
So looking at this now, you can see that the total payment originally for this transaction

claims at this stage of your analysis as you excluded [sic], right?
MS. FEGAN: I think you used "excluded" twice.
THE WITNESS: Yeah, I think -- I don't think that's right.
BY MR. RENDELL:
Q You excluded over three times as many claims at this stage of your analysis as you included at this stage of your analysis, right?
A Right.
Q Are you aware how many health plans may have only had claims among the 262 million-plus claims that you excluded?
A I can't do the calculation at the plan level because I don't have the data to do it at this point in time. But again, these PBMs are transacting a billion dollars -- a billion claims in a given day overall, nationwide. And so -- and these are very commonly used drugs.
So again, my assessment is -- is that most TPPs that would meet the definition of class would likely have at least one.
Q Can you assign a statistical number or a percentage likelihood to your likelihood estimate?

A I could. I have not done that calculation at this time.
Q Okay. And you say that these are very common drugs, but looking at your TPP class claims exclusion, isn't it a fair inference that they are more commonly charged at or under the HSP price than they are over the HSP price?
A I don't think you can make that assessment at this stage.
Q Why not?
A Because again, these are claims that I am including that meet multiple criteria, not just one.
Q Well, of the 322-plus million class claims that you looked at, more of them were previously adjudicated at a price that was at or below the HSP price than were adjudicated over the HSP price, right?
A You mean over the HCP [sic] price --
Q More --
A More of them were adjudicated over.
Q More of them were adjudicated at or under the HSP price than were adjudicated over the HSP price.
A Okay.

Q In other words, of these transactions --
A Uh-huh.
Q -- you excluded more than you included.
A That's right.
Q And you did that at the stage of your analysis where you were considering whether the original price had been equal to or less than the HSP price, right?
A Uh-huh.
MR. RENDELL: Nothing further at this time.
THE WITNESS: Thank you.
MS. FEGAN: Thank you.
THE VIDEOGRAPHER: We are off the record at 6:18 p.m., and this conclude today's testimony given by Rena Conti. The total number of media units used was six and will be retained by Veritext Legal Solutions.
(Whereupon, at 6:18 p.m., the deposition of RENA CONTI was concluded.)

CERTIFICATE OF NOTARY PUBLIC
I, Denise M. Brunet, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was sworn by me; that the testimony of said witness was taken by me stenographically and thereafter reduced to print by means of computer-assisted transcription by me to the best of my ability; that I am neither counsel for, related to, nor employed by any of the parties to this litigation and have no interest, financial or otherwise, in the outcome of this matter.

Denise M. Brunet
Notary Public in and for
The District of Columbia

My commission expires:
December 14, 2022